

Minutes for BCIPP Meeting #8

November 14, 2003

Teleconference
Berkeley—Sacramento—San Francisco
Burbank—Los Angeles—Pasadena

Commissioners attending:

Steve Afriat
Geoff Cowan
Conway Collis
Harvey Englander
Keith Flippin
James Rushford
Susie Swatt

10:20 AM—Commissioner Cowan called the meeting to order. The commission adopted the minutes from previous meeting. Commissioner Afriat moved to adopt the minutes, Commissioner Englander seconded and the minutes were approved via a roll call vote.

Commission members agreed on a date and discussed various topics related to the next meeting on Dec 5th 2003.

Matt Grossmann explained the document and draft report vetting process leading up to the Dec 5th meeting including vetting the recommendations with commissioners and a handful of individuals who are not members of the commission but experts in the field. Grossmann also urged commission to send their comments to him as soon as possible on drafts of the document that were circulated at the meeting. He explained that the next draft would be the final round for major comments.

Geoff Cowan led discussion about formal release and presentation to the legislature, governor and media in January 2004. Commissioners agreed to a public release date of the report of Jan 26—the commission plans to meet with leaders of both houses, FPPC, people in administration, key party leaders.

10:30 AM—Commissioner Cowan began discussion of the draft preface document. The Commission members considered a series of questions and acted as follows.

- 1) Can the Commission agree on the findings, specifically that the Internet has advanced central goals of the Political Reform Act? After discussion and without dissent the commissioners agreed with this finding.
- 2) Can the Commission agree that the promise of the Internet to advance the goals so outweighs the potential for harm at this early stage in its development that the legislature should err on the side of no new laws that restrict Internet political activity (and by

extension, political speech)? Most commissioners agreed with this proposition but Commissioner Swatt raised questions about the wording of the conclusion and it was agreed that the drafters would continue to work on the language of this section.

- 3) Can the Commission agree that no broad new regulatory body or arrangement is needed? The commissioners unanimously agreed with this finding but agreed to add language noting that the FPPC has some problems in its enforcement process that should be remedied for all FPPC matters, including those that would concern cases involving the Internet.
- 4) Can the Commission agree on the distinction between laws and regulations that restrict the use of the Internet for political campaigns and legal and regulatory changes that enable and enhance online political activity? The commissioners agreed with this conclusion but asked that a clause be added underling the need for regulators to be vigilant.
- 5) Can the Commission agree that there should be a special exemption for educational activity and news coverage? The commission approved this provision but asked that a clause be added making it clear that there is a need to avoid unintended consequences that could be caused by any such exemption.
- 6) Can the Commission agree that there should be a higher financial threshold for independent political activity on the Internet and that the threshold be raised from \$100 to \$1,000? The Commission agreed with the proposition if no specific dollar figures are included.
- 7) Can the Commission agree that there should be broad protections for hyperlinks and the promotion of viral marketing? In past meetings the commission has agreed to this recommendation, but Swatt raised concerns about some aspects of it and volunteered to work with the drafting team on exact language.
- 8) Can the Commission agree that because of the growing importance of the Internet, the state should take steps, such as facilitating the use of schools and libraries, to expand the accessibility of online political participation? The commission agreed that it should.
- 9) Can the Commission agree that the state should take steps to encourage local jurisdictions in the state to integrate online campaign finance reporting systems to enable simultaneous searches? After some discussion, the Commission agreed that interoperability is desirable if there is no mandate for the use of public funds and if the state does not mandate the use of any particular system.
- 10) Can the Commission agree that the state should adopt laws or regulations ensuring that Internet Service Providers do not remove a candidates political website without just cause? After some debate, the Commission decided not to make this recommendation.

11:30AM—Commissioner Cowan handed the meeting to Grossmann to discuss other documents. (This discussion was interrupted by Chairman Cowan at noon to see if there were any citizens in attendance who wished to comment. There were none and the meeting continued.)

Commission members adopted the organization of the report suggested by Grossmann (i.e. Preface, Executive Summary, Framework, Research Activities, Laws, Recommendations).

Matt Grossman reviewed the remaining documents. The commission agreed to the recommendations with the following caveats.

- 1) In the section recommending that public employees not use public resources for campaigning, the phrase Internet political activity should be changed to Internet political campaigning.
- 2) The Commission spent some time discussing recommendation #10 concerning the use of candidate names in domain names. The Commission concluded that the law described in the section may already have expired due to a sunset clause. The Commission agreed to conduct further research and to reword the section.
- 3) A majority of the Commissioners agreed that commercial search engines should not be deemed campaign contributions but Commissioner Swatt requested time to give the matter further thought.
- 4) The Commission agreed to consider adding stronger language to the preface document underlining the Commissions concerns about trampling on free speech rights.

12:05PM—Commissioner Cowan moved to approve all documents as discussed and amended during this meeting. Commissioner Afriat seconded and the motion was approved unanimously.

Because of the risk that there would not be a quorum available again in time to make further changes in the report, the Commission adopted a resolution permitting the document to be amended and adopted by a poll of the Commissioners.

12:10 PM—The meeting was adjourned.